

BOARD OF APPEALS CASE NO. 5149

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BEFORE THE

APPLICANTS: Thomas & Maureen Hyson

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ZONING HEARING EXAMINER

**REQUEST: Variance to permit a 6 foot high
fence and deck on existing pool within the required
front yard setback; 402 Ripplewood Road, Joppa**

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OF HARFORD COUNTY

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Hearing Advertised

HEARING DATE: September 24, 2001

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Aegis: 8/3/01 & 8/8/01

Record: 8/3/01 & 8/10/01

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ZONING HEARING EXAMINER'S DECISION

The Applicants, Thomas & Maureen Hyson, are requesting a variance, pursuant to Section 267-24B(1) of the Harford County Code, to allow an existing fence more than the required 4 foot in height in the front yard, and, for a variance pursuant to Section 267-26C(4), to allow an existing deck on a pool within the required front yard setback in an R3 Urban Residential District Community Development Project

The subject parcel is located at 402 Ripplewood Road, Joppa, Maryland 21085, in the First Election District, and is more particularly identified on Tax Map 69, Grid Number Block 2C, Parcel 164, Lot 7, in the subdivision of Joppatowne. The parcel is located in the Foster Branch neighborhood, and contains approximately 0.28 acres.

The Applicant, Maureen Hyson, appeared and testified that she and her husband, Co-Applicant Thomas Hyson are the owners of the subject property. She indicated that she had read the Department of Planning and Zoning Staff Report, and has no changes or corrections to the information contained therein. The witness described the property as a corner lot, improved by a two-story dwelling, a one story addition to the right side, and an attached rear porch. The property is also improved by an above-ground pool and a freestanding deck located in the rear yard, a concrete pad with portable carport to the right of the home, and a 6 foot fence.

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She testified that the property is located on the corner of Ripplewood Road and Summerfield Court, and that the front of her home is directly across the street from Riverside Elementary School. The Applicant stated that the site plan (Staff Report Attachment 3) shows the location of the existing home, fence, pool and pool deck. Ms. Hyson verified the measurements shown on the site plan, which indicate that the outside edge of the existing fence is located sixteen feet from Summerfield Court.

The witness then described several photographs attached to the Department of Planning and Zoning Staff Report. Attachment 7A is a photograph of the front of her home taken from the opposite side of Ripplewood Road. Attachment 7B shows the existing fence from the Summerfield Court side of the property. Attachment 7C shows the rear of the property, and the view looking up Summerfield Court toward the intersection with Ripplewood Road. Attachment 7D shows the back yard of the home, the existing pool and pool deck, and the steep slope on the right rear side of the back yard.

The Applicant then testified that because her home is located directly across the street from Riverside Elementary School, there are often vehicles parked on both Ripplewood Road and Summerfield Court. Children walk up and down both roads on their way to and from school. The fence provides security to keep the school children out of the yard, and away from the pool. She also testified that her family has a large dog that could easily jump over a 4 foot fence. She stated that due to the sloping topography of her rear yard, there is no other place on the property where the pool and deck can practically be located.

Finally, Ms. Hyson testified that the fence is compatible with, and similar in size and appearance to other fences in the neighborhood. The pool deck is similar to other pool decks commonly found in Harford County. The witness stated that she does not believe the requested variances would have any adverse impact on neighboring properties because the fence is aesthetically pleasing. Ms. Hyson stated that they have not received any complaints from neighboring property owners about the fence, and in fact, several of her neighbors have commented favorably about it's appearance. The pool is not visible from outside the fence. The witness testified that in her opinion, there is nothing unique or different about either her fence or pool deck which would distinguish it from other fences or pool decks commonly found either in Foster Branch, or in Harford County generally.

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The second witness who appeared was the Co-Applicant Thomas Hyson. Mr. Hyson stated that the property is unusual because it is subject to two front yard setbacks, and that this limits the available building area. He also stated that the existing fence does not block the view for oncoming traffic on either Ripplewood Road or Summerfield Court.

Mr. Anthony McClune, Manager, Division of Land Use Management for the Department of Planning and Zoning appeared and testified regarding the findings of fact and recommendations made by the Department. Mr McClune testified that the Department recommended approval of the subject request in its June 7, 2001 Staff Report. It found that the “subject property is a corner lot and has a limited building envelope. The location of the pool and deck appear to be the only practical location. The fence does not impact traffic on Summerfield Road. The fence provides security for the property and the pool.” Mr. McClune also testified that the fence and pool deck are consistent with other development in the neighborhood, have no adverse impact on neighboring properties, and “will not materially impair the purpose of the Code or the public interest.”

No witnesses appeared in opposition to the requested variance.

CONCLUSION:

The Applicants, Thomas & Maureen Hyson, are requesting a variance pursuant to Section 267-24B(1) of the Harford County Code, to allow an existing fence more than the required 4 foot in height in the front yard, and variance pursuant to Section 267-26C(4), to allow an existing deck on a pool within the required front yard in an R3 Urban Residential District Community Development Project.

Section 267-26C(4) of the Harford County Code provides:

“No accessory use or structure shall be established within the required front yard, except agriculture, signs, fences, walls or parking area and projections or garages as specified in Section 267-23C, Exceptions and modifications to minimum yard requirements.”

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Section 267-11 of The Harford County Code permits the granting of variances, stating that:

“Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.”

The Maryland Court of Special Appeals set forth a two prong test for determining whether a variance should be granted in the case of Cromwell v. Ward, 102 Md. App. 691, (1995). This two-prong test can be summarized as follows. First, there must be a determination as to whether there is anything unique about the property for which the variance is being requested. A lot is unique if there is a finding that a peculiar characteristic or unusual circumstance relating only to the subject property, causes the zoning ordinance to impact more severely on that property than on surrounding properties. Cromwell, supra, at 721. If the subject property is found to be unique, the Hearing Examiner may proceed to the second prong of the test. The second prong requires a determination as to whether literal enforcement of the zoning ordinance with regard to the unique property would result in practical difficulty or unreasonable hardship to the property owner.

The Hearing Examiner finds that the subject property is unique. The property is a corner, lot, and hence subject to two side yard setbacks. In addition, the sloping topography of the rear yard limits the area in which a pool or deck can be located. There was no opposition testimony introduced to contradict any of these findings. Thus, the first prong of the Cromwell test has been met.

Having first found that the subject property is unique, it must next be determined whether denial of the requested variance would create an unreasonable hardship or practical difficulty for the Applicants.

The Hearing Examiner finds that literal enforcement of the Code would result in practical difficulty in this case because if the property was not subject to two front yard

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setbacks the Applicants would not need a variance to maintain the existing fence and pool deck. If the variance is not granted, the Applicants will be denied property rights commonly enjoyed by others in their neighborhood. Other property owners within Foster Branch, and Harford County generally, have greater flexibility in the construction of fences and pool decks on similarly sized lots.

Finally, the Hearing Examiner finds that the granting of the requested variance will not have any adverse impact on, or be substantially detrimental to adjacent properties, or materially impair the purpose of this Code or the public interest. The fence is compatible with other fences in the area, and the pool deck is not visible from outside the fenced in rear yard area. Further, the existing fence does not interfere with site distance at the intersection of Summerfield Court and Ripplewood Road.

The Hearing Examiner recommends approval of the Applicant's request subject to the following conditions:

1. That the Applicant amend the existing permit for the fence to reflect the correct height of 6 feet.
2. That the Applicants obtain all necessary permits for the pool deck.
3. That the Applicant not encroach further into the setbacks than the distance requested herein.

DATE OCTOBER 16, 2001

Rebecca A. Bryant
Zoning Hearing Examiner